Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-1220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

DELAWARE & HUDSON RAILWAY COMPANY,
Petitioner,

v.

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR RESPONDENT IN RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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Date: March 3, 1987

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Respondent Brotherhood of Maintenance of Way Employes [hereinafter, "BMWE"] respectfully submits that this Court should defer consideration of the petition for a writ of certiorari in this case until after this Court enters its ruling in Sup. Ct. No. 86-39, *Burlington Northern R.R. v. BMWE*.

COUNTERSTATEMENT OF THE CASE

While respondent BMWE disagrees with petitioner Delaware & Hudson Railway Company's [hereinafter, "D&H"] recitation of the facts in this case insofar as petitioner alleges that it is in fact separate and distinct from its related corporations, the Maine Central Railroad and Portland Terminal, petitioner's alignment with those carriers is irrelevant to the reasoning given by the First Circuit for its decision in this case. Conse-

quently, respondent BMWE will not address this factual dispute at this time.

ARGUMENT

Respondent BMWE agrees with petitioner D&H's implicit suggestion that the proper resolution of the issues presented by this petition will be controlled by whatever decision this Court enters in Sup. Ct. No. 86-39, *Burlington Northern R.R. v. BMWE*, which was argued before this Court on February 23, 1987. Consequently, respondent BMWE respectfully submits that this Court should defer consideration of the petition for a writ of certiorari in this case until after the ruling in *Burlington Northern* is issued. If, as respondent BMWE asserts should occur, this Court affirms the decision by the Seventh Circuit in that case, respondent submits that the petition for a writ of certiorari in this case should be denied. However, if this Court reverses the Seventh Circuit's decision, respondent respectfully requests that it then be granted an opportunity to file a supplemental brief concerning the proper disposition of this case in light of that ruling.

CONCLUSION

Respondent BMWE respectfully submits that the consideration of this case should be deferred pending resolution of Sup. Ct. No. 86-39, *Burlington Northern R.R. v. BMWE*.

Respectfully submitted,

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